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IN THE

Supreme Court of the United States

October Term, 1971
No. 71-563

JAMES R. ROHRBAUGH, LAURELHURST UNITED PRESBYTERIAN CHURCH, INC., a Washington nonprofit corporation, and ALLEN PRIER, chairman of the Board of Trustees and representing all other trustees similarly situated, and RALPH SCHREINER, R. W. SPRAGUE, S. R. HANSEN, C. W. GIBBS, R. T. DOWNS, JERRY JOURNEY, EARL E. MCMILLAN, FRANK JOHNSON, KARL HOUSE, ARNOLD J. CARLSON, DR. DOO SOO SUH, PHIL GALLAHER, DR. KIRK DOUGLAS, GLEN CARSON and EWART SUFFEL, being the Elders and members of the Session and some of the withdrawing members of the Laurelhurst Church and representing all others similarly situated,
Petitioners,

v.

THE PRESBYTERY OF SEATTLE, INC., a nonprofit Washington corporation, and WILLIAM H. GOLEEKE, being a member of the Laurelhurst United Presbyterian Church and representing all others similarly situated,
Respondents.

SUPPLEMENTAL BRIEF

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PREFACE

Respondents not having filed an opposing brief, petitioners respectfully submit this supplemental brief under Rule 24(5).

After the petition for *certiorari* was filed herein, it came to the notice of petitioners' counsel that on October 12, 1971, this court had dismissed "for want of a substantial federal question" the appeal in *Second United Presbyterian Church of Johnstown v. Presbytery of Albany*, 35 A.D.2d 252, 315 N.Y.S.2d 428, 28 N.Y.2d 772, 321 N.Y.S.

2d 377, 269 N.E. 918. This court's dismissal is reported in the Supreme Court Reporter of November 15, 1971, as 92 S.Ct. 80.

This New York case does not apply to the present case. There title to church property was specifically adjudicated under the directly applicable section 17-b of the Religious Corporation Law of New York, a statutory solution of the title problem wholly consistent with *Hull*, 393 U.S. 440 (1969) and *Maryland and Virginia Eldership*, 396 U.S. 367.

In *Maryland and Virginia Eldership*, 396 U.S. 367, dismissing the appeal for want of a substantial federal question (always a decision on the merits) this court pointed out that the Maryland court relied on religious corporation laws and deeds to the local church corporation. Mr. Justice Brennan, concurring (p. 370) stated that "neutral principles of law" included consideration of state corporation laws. Hence the recent New York case, in which this court dismissed the appeal on October 12, 1971, falls squarely into the category of controlling state statutes as did *Maryland and Virginia Eldership, supra*.

Here no such statute is involved. Here the trial court (see Appendix D) examined in its Findings (Appendix D. Petition pp. A22-32) the individual ecclesiastical procedures followed by the respondent Presbytery, decided matters of church doctrine and practice, as, for example, that under the Book of Order (an ecclesiastical document —see Petition, Appendix F) and practice of the national church, no local church could withdraw. This incursion into religious doctrine and practice in these Findings and Conclusions on ecclesiastical procedures and doctrines

was affirmed by the Washington State Supreme Court in this case—all in violation of *Hull*, 393 U.S. 440, and *Maryland and Virginia Eldership*, 396 U.S. 367.

CONCLUSION

A current review of the state court cases shows that they are in hopeless and irreconcilable conflict in their interpretation of *Hull*.

On the one hand, we have the majority view of the decisions in Maryland, Georgia, Ohio and Indiana upholding (absent any controlling statute) the formal title approach as being the proper interpretation of *Hull*, avoiding any inquiry into or determination of church doctrine or practice, and upholding title in local church corporations. These cases are listed in the Appendix to this Supplemental Brief.

To this group, anticipating *Hull*, may be added *First English Lutheran Church v. Evangelical Synod of Kansas*, 135 F.2d 701 (Tenth Circuit) quoted from in the appendix to this Supplemental Brief.

The law reviews support this position:

54 Iowa Law Review, 899, 907 (1969)

XXVII Washington & Lee Law Review, 44-69, especially p. 68 (1970)

74 Yale Law Journal, 1113, 1137 (1963)

On the other hand, upholding ownership in the national church as against the local church corporations, we have the Supreme Court of the State of Washington in the instant case and the Supreme Court of Pennsylvania in several cases, especially *Pilgrim Holiness Church v. Pilgrim Holiness Church of Athens Township*, 436 Pa. 239, 259

A.2d 870 (1969). Both Washington and Pennsylvania make determinations of religious law and practice.

Roberts, J., dissenting in the companion Pennsylvania cases, pointed out the violation of *Hull* (259 A.2d at p. 425).

This conflict of state court decisions and contrariety of results can be resolved only by an opinion of this court spelling out the guidelines further so that the state courts cannot misunderstand.

Mr. Justice Brennan's concurring remarks about "inquiry into religious polity" in *Maryland & Virginia Churches v. Sharpsburg Church*, 396 U.S. 367, 24 L.Ed.2d 582, 90 S.Ct. 499 (1970), joined by Justice Douglas and Marshall, while helpful to our position, are unfortunately not the expressed view of the majority of the court. Until there is a further opinion by the whole court, the legal position of thousands of churches and millions of parishioners will be in doubt and confusion, with resulting great damage to losing congregations.

A mere glance at the Findings of Fact and Conclusions of Law set forth in Appendix D of our petition for *certiorari*, shows that the trial court, over denial in the answer, decided that the national church was Presbyterian in form (Finding IV, Petition, p. A-25), that the plaintiff Presbytery had properly taken detailed steps under ecclesiastical law "pursuant to the Book of Order" to obtain possession of the church property (Findings IX and X, Petition, p. A-27), and "that there is no provision under the Constitution, Book of Order, or Book of Discipline of the United Presbyterian Church in the United States of

America for a congregation or church to withdraw from the denomination." (Finding XII, Petition, p. A-28)

How could any deeper and more detailed "inquiry into religious polity" and "religious doctrine and practice" be made?

Please note in this connection the decision of the Tenth Circuit in *First English Lutheran Church*, quoted above, and the decision of the Maryland court (254 A.2d 162, 170) quoted on page 18 of our petition, both holding that the right to withdraw under the internal ecclesiastical rules of the church could not constitutionally be inquired into by a civil court.

Only this court can resolve the conflict.

We respectfully urge that the writ issue.

Respectfully submitted,

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ALFRED J. SCHWEPPE
Attorneys for Petitioners

APPENDIX A

I.

Cases Upholding Title of Local Church Corporations

1. *Maryland & Virginia Eldership etc. v. Church of God*, 393 U.S. 528, 21 L.Ed.2d 750, 89 S.Ct. 850 (1969), remanding 249 Md. 650, 241 A.2d 691 (1968) for further consideration in the light of *Hull*, and dismissing appeal from the ensuing second Maryland decision, 254 Md. 162, 254 A.2d 162 (1969) in 396 U.S. 367.

2. *Presbyterian Church in the United States v. Hull Memorial Church*, 224 Ga. 61, 159 S.E.2d 690 (1968), 393 U.S. 440, 21 L.Ed.2d 658, 89 S.Ct. 601 (1969) remanding for further consideration in the light of *Hull*, and *certiorari* denied in ensuing second Georgia case, 225 Ga. 259, 167 S.E.2d 658 (1969) in 396 U.S. 1041, 24 L.Ed.2d 685, 90 S.Ct. 680 (1970).

3. *Serbian Orthodox Church Congregation of St. Demetrius of Akron v. Keleman*, 22 Ohio St.2d 154, 156 N.E.2d 212 (March 4, 1970), *certiorari* denied October 12, 1970, 91 S.Ct. 54. This case had been remanded for further consideration in the light of *Hull*, 393 U.S. 527 (1969).

4. *Merryman v. Price*, ...Ind....., 259 N.E.2d 883 (June, 1970). This case, containing an excellent analysis of *Hull*, affirmed title in the local church where the position of the general church could not be sustained without reference to ecclesiastical law, church discipline or church doctrine.

5. Actually *Hull* was anticipated by the Tenth Circuit

in *First English Lutheran Church v. Evangelical Lutheran Synod of Kansas,* 135 F.2d 701 (1943) where the court said (p. 702):

> "Extended argument is submitted in respect of the power of the church to withdraw from the Synod of Kansas without its consent. A civil court will not review acts of a religious organization relating solely and exclusively to an internal ecclesiastical affair for the sole purpose of ascertaining whether they are regular or in accordance with the polity, discipline or usages of the organization."

That the case was like the instant case is shown by the following quotation (p. 703):

> ". . . in most if not all the cases in which a civil court has exerted its equitable jurisdiction to protect a property right, the action was instituted by the trustees or other officers of the church having legal title to the property, or by members of a faction in the church who sued for themselves and as members of a class having a beneficial interest in the property. That was not done here. The Synod of Kansas alone brought this action solely in its own behalf. The edifice and other property in question belongs to the church at Oklahoma City, a corporation. Title has never been vested in the Synod of Kansas. And the synod does not have any beneficial interest in the property which would be violated by the transfer of synodical affiliation. In the early years of the existence of the church, the synod made financial contributions to the church, but it is not alleged or shown that as the result of such contributions it acquired or has a lien upon the property or other beneficial interest in it."

II.

Cases Upholding Title In the National Church

1. The Supreme Court of the State of Washington in the instance case, 79 Wn.2d 367, 485 P.2d 615 (1971).

2. (a) *Pilgrim Holiness Church v. Pilgrim Holiness Church of Athens Township*, 436 Pa. 239, 259 A.2d 870 (1969), Roberts, J., dissenting.

(b) *St. John Chrysostom Greek Catholic Church v. Elko*, 436 Pa. 243, 259 A.2d 419 (1969), Roberts, J. dissenting.

(c) *St. Michael and Arch Angel. Russian Orthodox Greek Catholic Church v. Uhiniat*, 436 Pa. 222, 259 A.2d 862, Roberts, J., dissenting.